

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission,) Application No. PI-73/
on its own motion, seeking to) 911-004
investigate enhanced 911)
surcharges collected by wireless) ORDER CLOSING DOCKET
carriers.)
) Entered: March 2, 2004

BY THE COMMISSION:

On September 3, 2003, the Commission opened this docket to examine the practice of some wireless providers imposing additional, separate surcharges and fees for wireless enhanced 911, as well as number pooling and number portability.

The Commission sought written comment and held a hearing to address the following issues:

- a. Should the State provide cost recovery to a wireless carrier if it is already seeking cost recovery directly from its customers?
- b. Should the Commission adopt a policy that wireless carriers collecting surcharges for E911 services must first account to the Commission before being approved for money from the Enhanced Wireless 911 Fund?

Written comments were due by October 3, 2004, and the following parties timely filed comments: AT&T Wireless (AT&T), ALLTEL, Nextel Partners (Nextel) and Sprint. A hearing was held on November 5, 2003. All written comments were made part of the record, and representatives of Nextel Partners and Custer County verbally commented at the hearing.

AT&T commented that the PSC's concerns about double- or over-recovery are unfounded, as AT&T will have difficulty even recovering full costs of compliance with FCC E911 requirements. AT&T asserted that it's "Regulatory Programs Fee" of \$1.75, coupled with the \$0.50 monthly surcharge collected from its customers, are insufficient to cover AT&T's costs. AT&T also stated that when it recovers its costs of regulatory obligations, it will eliminate its "Regulatory Programs Fee," provided that it does not encounter new government mandates. AT&T further commented that the PSC's current statutory authority to require recipients of money from the Wireless E911 Fund is sufficient, as the PSC can require entities to make a "full accounting". Finally, AT&T asserted that any further examination of fees that a wireless carrier receives, such as examining use of a "Regulatory Programs Fee," would be

tantamount to rate regulation, which is impermissible under the Federal Communications Act.

ALLTEL suggested that carriers ~~be~~ allowed to recover costs from consumers that are not recoverable from the Wireless E911 Fund.

Nextel suggested that if a carrier seeks cost recovery from the Wireless E911 Fund for one phase of service, it should not be foreclosed from using a regulatory fee to recover costs for a different phase of service. Nextel indicated that it plans to seek reimbursement from the Fund for Phase I, but for Phase II will use a customer charge to recoup costs and will not seek recovery from the Fund. At the hearing, Nextel's counsel commented that the Commission's ability to require carriers to make a full accounting of funds they receive is sufficient for the Commission's purposes, and that no further accounting is necessary.

Sprint suggested that Commission obtain a statement from wireless carriers regarding the expenses they recover from the Fund, to ensure that a carrier is not attempting to double-recover.

O P I N I O N A N D F I N D I N G S

The regulatory surcharges that carriers are collecting appear to be for costs of Phase II, and not Phase I. Prior to opening the above-captioned docket, the Commission determined not to accept requests for funding of Phase II until otherwise ordered, so that the Commission may collect additional information regarding equipment requirements and costs. See, Application No. 911-001/PI-52, Progression Order No. 6, entered March 4, 2003. Given this status, the Commission finds that no action regarding the ability of carriers to recover costs from the Fund is necessary at this time.

However, the Commission disagrees with filed comments that it should not delve into wireless carriers' accounting of such regulatory fees when a carrier makes application for costs that it might also be recovering from its customers. As a preliminary matter, the Commission believes that use of additional surcharges should be taken into account when evaluating a wireless carrier's request for Phase II costs in the future. Therefore, the Commission will continue to monitor use of regulatory surcharges, and may open another docket on this topic as Phase II approaches.

In conclusion, the Commission plans to continue to pay Phase I costs that comport with existing rules, regulations and guidelines, but may evaluate the usage of additional surcharges when begins preparing to accept applications for funding Phase II.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the above-captioned public investigation is hereby closed.

MADE AND ENTERED at Lincoln, Nebraska, this 2nd day of March, 2004.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director